IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6545 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SARVODAYA YUVAK MANDAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6545 of 1985

MR KM PATEL for Petitioner No. 1

MR. L.R. PUJARI, A.G.P. for Respondent No. 1-2

MR GIRISH PATEL for Respondent No. 3

CORAM : MR.JUSTICE N.G.NANDI

Date of decision: 20/07/2001

ORAL JUDGEMENT

1. In this writ petition under Article 226 of the Constitution of India the petitioner has been challenging the action of respondent no. 2 whereby the grant in respect of land admeasuring 2024 sq meters in Survey No.

880 of Village Gungdipati, Taluka Patan, District Mehsana is said to be cancelled by order dated 08.11.1985 at the relevant time and for a declaration that Rule 36 of Bombay Land Revenue Rules, 1921 ultravires the Article 14 of the Constitution of India.

2. That the petitioner is a public charitable trust registered under Bombay Pubic Trust Act, 1950 with a view to provide residential accommodation to the students executing studies belonging to the poor and less educated caste classified in Baxi Panch communities. The petitioner in August, 1982 made an application to respondent no. 2 herein requesting him to grant land in Survey No. 880 at Village Gungdipati , Taluka Patan for constructing hostel building and providing play ground. Consequently, in January, 1983 a permission was obtained from the Director of Social Welfare Department, Government of Gujarat for constructing hostel and providing play ground for the students belonging to Baxi Panch communities. That according to the land revenue record, the land bearing Survey No. 880 is a "Padtar" land. That according to village Form Nos. 7 and 12 the land bearing Survey No. 880 was the Government land. That Shri. Naranji Jivabhai Bihl (Respondent no. 3) was shown to be a tenant of the land in the year 1977-78. That the said Shri. Naranji Jivabhai Bhil was a trespasser and was illegally occupying the said land. That Shri.Naranji Jivabhai Bhil was evicted from the said land under Section 61 of the Bombay Land Revenue Code. That the petitioner applied for the grant of the said land with a view to construct hostel and provide play ground to the students belonging to Baxi Panch community, vide order dated 24.10.1984 (Annexure B). Respondent no. 2 granted lease in respect of land admeasuring 2024 sq meters out of Survey No. 880 for constructing hostel building and the grant was made subject to the provisions contained in Rule 36 (1) of the Bombay Land Revenue Code. The said lease was for a period of fifteen years on a token annual rent of Rs. 1/-. Respondent no. 1 vide yadi/order dated 24.10.1985 cancelled the grant which was in favour of the petitioner. The Mamlatdar has vide communication dated 15.11.1985 informed the petitioner to hand over physical possession of the land in question to Circle Inspector on the basis of the order dated 08.11.1985 passed by respondent no. 2 cancelling the grant and lease of the land on the basis of the yadi/order dated 24.10.1985. That the said action/order dated 08.11.1985 is challenged as illegal, arbitrary and in violation of the principles of natural justice.

3. Respondent no. 3 was later on impleaded in this

petition. He filed affidavit in reply contending that his maternal grand father Girdharji Hemtuji Bhil was a tenant and in occupation and cultivating the land in question. That after his death the mother of respondent no. 3 was cultivating the land and that the respondent has been cultivating the land since last fifteen years. That the land has been in cultivation of respondent's family for the last more than seventy years. That the respondent was last put in physical possession of the land on 16.11.1985 and since then he has been in actual physical possession of the same and the land was not a "padtar" land.

4. It is not in dispute that Girdharji Hemtuji Bhil was in possession of the said land bearing Survey No. 880 at Gungdipati, Taluka Patan, District Mehsana as the tenant thereof in the year 1977 - 1978. The land admeasuring 2024 sq meters of Survey No.880 Gungdipati, Taluka Patan was given to the petitioner trust for the purpose of constructing hostel and providing play ground to the students vide order dated 24.10.1984. It is not in dispute that grant in favour of the petitioner came to be cancelled vide order dated 24.10.1985 by respondent no. 1. On the basis of order / yadi dated 24.10.1985 by respondent no. 1 cancelling the grant, Mamlatdar, Patan, vide communication dated 15.11.1985 informed the petitioner to hand over physical possession of the land in question to the Circle Inspector.

5. I have heard and considered the submission advanced by the learned Counsels appearing for the parties.

6. The order dated 24.10.1985 cancelling the grant in respect of land admeasuring 2024 sq meters of Survey No. 880 passed by respondent no. 1 has not been challenged in the present petition by the petitioner. The order dated 24.10.1985 cancelling the grant has not been challenged as stated by learned Advocate Shri. Pujari under Section 211 of Bombay Land Revenue Code, by way of Revision Application before the Secretary (Appeals) for the State of Gujarat. In the petition as well as the affidavit in reply filed by respondent no. 3 the disputed questions of fact namely the cultivation and the possession of respondent no. 3 at the relevant point of time is also involved. The petitioner has been disputing possession of respondent no. 2 whereas respondent no. 3 has been asserting his possession of land. Respondent no. 3 has also been relying on order dated 06.11.1985 passed by respondent no. 2 produced at Annexure - X. The disputed question as regards the the

cultivation by and actual occupation of the subject land cannot be gone into by this Court under Article 226/227 of Constitution of India.

7. It is argued by learned Advocate for the petitioner that he was not given opportunity of hearing before cancelling the grant by respondent no. 1. In absence of challenge to the basic order dated 24.10.1985 by respondent no. 2 much less on the said ground, I do not think it necessary to go into this submission.

8. In view of the above the petitioner is not entitled to the relief claimed in the petition and the petition would be liable to be rejected. In the result petition fails. Rule is discharged. No orders as to costs. Interim relief granted earlier stands vacated.

(N.G. NANDI,J.)

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